BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
Developing a Unified Intercarrier	)	CC Docket No. 95-116
Compensation Regime	)	

COMMENTS
OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
telephone: (573) 635-7166
facsimile: (573) 634-7431

Attorneys for the MoSTCG

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I. INTRODUCTION

The Missouri Small Telephone Company Group (MoSTCG)[1] is made up of twenty-five (25) small telephone companies serving between approximately 250 and 16,500 access lines in predominantly rural, high-cost areas within the state of Missouri. The members of the MoSTCG are rural telephone companies as defined by the Telecommunications Act of 1996 ("the Act")[2] and are "small entities" and "small businesses" as defined by the Federal Communications Commission ("Commission") in its *Initial Regulatory Flexibility Analysis* (*"IRFA"*).[3]

Some of the MoSTCG companies have implemented wireline-to-wireless LNP pursuant to the Commission's November 10, 2003 *Memorandum Opinion and Order* ("the *Intermodal Order*") mandating wireline-to-wireless Local Number Portability ("LNP").[4] Many other MoSTCG companies sought and received from the Missouri Public Service Commission ("Missouri PSC") temporary suspensions of Commission's wireline-to-wireless porting requirements.[5] In each of those cases, the Missouri PSC found that suspension was necessary to avoid an "undue economic burden" on the MoSTCG companies. Also, all of the MoSTCG

[1] *See* Attachment A.

[2] 47 U.S.C. § 153(37).

[3] *Public Notice Seeking Comment on Initial Regulatory Flexibility Analysis (IRFA) of the Intermodal Order on Wireline-to-Wireless Number Portability*, CC Docket No. 95-116, Federal Register, Vol. 70, No. 138, published July 20, 2005, ¶ 7.

[4] *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697, released Nov. 10, 2003.

[5] See e.g. *In the Matter of the Petition of Farber Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri PSC Case No. TO-2004-0437, *Order Approving Unanimous Stipulation and Agreement*, issued July 27, 2004, ordered ¶2.

companies have sought and been granted modification from the Missouri PSC so that the MoSTCG companies will not bear the cost for establishing any facilities or arrangements with third-party carriers to transport ported calls to any point outside of the MoSTCG companies' local service areas.[6]

II. LNP COMPLIANCE AND IMPLEMENTATION COSTS

As a part of the LNP suspension and modification proceedings before the Missouri PSC, many of the MoSTCG companies provided company-specific LNP implementation cost data and estimates. One-time (non-recurring) costs for the MoSTCG companies associated with implementation of LNP included costs such as replacing switching equipment, training, updating porting procedures, upgrading hardware, and upgrading software. The MoSTCG companies also provided cost information and estimates for recurring costs such as database administration and porting transactions. If the cost data or estimates changed substantially after the Missouri PSC's 2004 LNP proceedings, then those numbers have been updated.

A. LNP Implementation Cost Data and Estimates

The total amount of one-time non-recurring implementation costs and cost estimates associated with wireline-to-wireless LNP for the MoSTCG companies is nearly $1,000,000. This is the total amount for all twenty-five (25) MoSTCG companies that serve a total of approximately 88,500 rural access lines.

In addition, two of the small companies that implemented LNP purchased new switching equipment rather than retrofitting older switches. These two companies spent nearly $500,000

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[6] *Id.* at ordered ¶3.

combined on new switching equipment in addition to the nearly $1,000,000 mentioned above, and LNP was a major factor in this decision. If other carriers that presently have suspensions from the *Intermodal Order's* LNP requirements make the same decision and opt to purchase new switching equipment rather than retrofit older switches, then the $1,000,000 implementation cost data and estimates could increase substantially.

B. Ongoing LNP Cost Data and Estimates

The total amount of costs and cost estimates associated with recurring expenditures for wireline-to-wireless LNP is over $27,000 per month, or more than $324,000 per year.

C. Costs Per Line

The Commission's rules allow for companies to recover their LNP costs through an end-user surcharge, but this method of recovery is problematic for rural carriers that have a small customer base over which to apply these surcharges. For example, one small MoSTCG member company had an estimated monthly recurring charge of $7.92 per customer to recover LNP costs over the five-year time period allowed by the Commission. Evidence before the Missouri PSC demonstrated that the estimated monthly LNP costs per customer for the MoSTCG member companies that received suspensions ranged from $0.11 to $7.92 per month, with an average estimate of $1.84 per customer, per month. The Missouri PSC found that suspension of LNP for these small companies was "necessary to avoid a significant adverse economic impact on users of telecommunications services generally and to **avoid imposing a requirement that is unduly burdensome**."[7]

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[7] Farber *Report and Order*, Case No. TO-2004-0437, p. 9 (emphasis added).

D. Costs to Establish Agreements

Most of the small incumbent local exchange companies (ILECs) in Missouri do not have any facilities or agreements in place to carry wireless calls outside of their rural exchange boundaries. Evidence in Missouri showed that many small ILECs could not transport wireless calls outside of their exchange boundaries unless they had negotiated agreements with one or more other large ILECs. For example, Craw-Kan Telephone Cooperative, Inc. would have to negotiate agreements with both Sprint Missouri, Inc. (the ILEC) and Southwestern Bell Telephone Company (d/b/a "SBC Missouri"). The Missouri PSC found that "The financial impact of negotiating an interconnection agreement could range from $20,000 to $100,000 depending on whether issues are settled or must be negotiated."[8] These negotiation costs are in addition to the implementation and ongoing cost data and estimates provided above.

E. Transport Costs

The Commission's *Initial Regulatory Flexibility Analysis* recognizes that "porting beyond wireline rate center boundaries could impose compliance burdens on small entities."[9] Specifically, "porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches."[10]

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[8] Craw-Kan *Report and Order*, Case No. TO-2004-0505, pp. 3-4.

[9] *IRFA*, Federal Register, Vol. 70, No. 138, at ¶10.

[10] *IRFA*, Federal Register, Vol. 70, No. 138, at ¶10.

The Missouri PSC has found that modification of the MoSTCG companies' obligation to transport calls to ported numbers served by distant switches is "necessary to avoid an **undue economic burden**."[11] Transport could be a substantial component of the recurring intermodal LNP costs for the MoSTCG companies, particularly for those companies that are farthest from Missouri's metropolitan areas. As an example, one MoSTCG company located near a metropolitan area has estimated transport costs of $170 out of a total of $440 (or 38%) of monthly recurring LNP costs. On the other hand, another small company that is more remote from Missouri's metropolitan areas has estimated monthly transport costs of $1,500 out of a total of $1,770 (or 85%) of its monthly recurring LNP costs. Thus, the costs associated with carrying wireline-to-wireless LNP traffic present a problem for small Missouri telephone companies providing service in remote rural areas that can be well over 100 miles away from the wireless carrier's distant point of interconnection (POI).

For example, if a wireless carrier sought a wireline-to-wireless LNP arrangement with the BPS Telephone Company ("BPS") Steele exchange, which is located in the southeast corner or "bootheel" of Missouri, that wireless carrier might expect BPS to transport the ported call to the wireless carrier's POI in St. Louis, Missouri, well over 170 miles away and over 170 miles outside of the BPS local exchange service area. Likewise, a wireless carrier that sought a wireline-to-wireless LNP arrangement with the Mark Twain Rural Telephone Company ("Mark Twain") Hurdland exchange in northeast Missouri would expect Mark Twain to transport the

[11] *In the Matter of the Petition of KLM Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri Public Service Commission Case No. TO-2004-0401, *Report and Order*, issued Aug. 12, 2004 (emphasis added).

wireless traffic to the wireless carrier's POI in Kansas City, Missouri, over 160 miles away and over 160 miles beyond Mark Twain's local exchange service area.

The unfairness of this transport problem was aptly demonstrated by Missouri PSC Commissioner Gaw during the hearings involving wireline-to-wireless LNP:

> [I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I – that's nice. What will you give me for him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing. . . . this scenario asks that local company to pay for the . . . continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.[12]

The Commission should avoid undue economic burden that these wireline-to-wireless LNP scenarios create in remote rural areas. To do so, the Commission should find that wireless carriers are financially and operationally responsible for the transport and termination of any ported wireless calls if the wireless carrier has no POI within the rural LEC's service area.

The Missouri PSC has specifically found that MoSTCG member companies and their customers would gain no benefit from bearing these transport costs. For example, in KLM Telephone Company's case, the Missouri PSC stated:

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[12] KLM *Report and Order*, Case No. TO-2004-0401, Tr. 67 (questions by Commissioner Gaw).

> First, it is uncertain whether Western Wireless or KLM will ultimately be required to bear the costs of transporting calls to ported numbers. Also, in order to transport calls outside of its service area, **KLM will have to bear the costs of new facilities, third-party arrangements and regulatory processes**. Lastly, **KLM stands to gain no benefit from these costs. These factors combine to create an undue economic burden**. Modification of KLM's obligation to transport calls to ported numbers is consistent with the public interest, convenience and necessity. **Modification is certainly consistent with the interest, convenience and necessity of KLM's customers. KLM's customers would otherwise have to bear the cost of transporting calls, while receiving no benefit**.[13]

Thus, the Missouri PSC has found that saddling the MoSTCG member companies and their customers with the wireless carriers' transport costs would impose an undue economic burden. The Commission should ensure that small rural ILECs will not be forced to pay for carrying wireless calls to a POI outside of the rural ILEC's exchange boundaries.

Missouri's small rural telephone companies have already spent substantial resources to become LNP capable or prepare for LNP. There is no benefit in imposing further compliance burdens and costs on small entities such as the MoSTCG companies such that they are forced to bear the additional costs of carrying their wireless competitors' ported calls to POI's far beyond the MoSTCG companies' exchange boundaries. If wireless carriers want to have "local" numbers in a small ILEC's exchange area without establishing any facilities, then wireless carriers should make and pay for their own arrangements to transport the calls to their distant POI locations.

[13] *In the Matter of KLM Telephone Company*, Case No. TO-2004-0401, *Report and Order*, issued Aug. 12, 2004.

III. LACK OF LNP DEMAND

The evidence in Missouri shows that: (1) wireless carriers are competing vigorously in rural areas served by the STCG companies, and (2) there is little or no demand for wireline-to-wireless LNP in these rural areas.

A. Wireless Competition is Robust in Rural Missouri.

Recent evidence shows that wireless carriers are already competing vigorously in Missouri and its rural areas, and the Missouri PSC has found that wireless competition is robust in these rural areas. For example, the Missouri PSC found that one wireless carrier had a number of subscribers that was equal to 76% of the landlines in a small rural ILEC exchange, and this same exchange was also served by six other wireless carriers.[14] The MoPSC found that wireless carriers already have "a significant presence in these service territories."[15] Evidence from the Missouri PSC's LNP suspension and modification cases also demonstrates that wireless competition is flourishing. For example, the MoSTCG witness testified that there were between 4-6 wireless companies that provide service in the rural Missouri exchanges served by Craw-Kan Telephone Company (Craw-Kan), so wireless service is available from multiple carriers.[16]

Not only are there many choices of wireless providers, but it appears that the penetration rate for wireless carriers is already approaching that of the wireline carriers. For example, in the

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[14] *In the Matter of Mid-Missouri Cellular*, Case No. TO-2003-0531, *Report and Order*, issued Aug. 5, 2004.

[15] *Id.*

[16] *In the Matter of the Petition of Craw-Kan Telephone Cooperative for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Case No. TO-2004-0505, Tr. 245 (from 7/22/4 hearing).

KLM Telephone Company (KLM) LNP suspension case, Western Wireless testified that it had approximately 400 customers in KLM's service area, and Western Wireless also testified that it had 25% market share in this service area.[17] Thus, according to Western Wireless there are already 1,600 wireless customers in KLM's service area which has 1,625 KLM wireline subscribers. In other words, wireless carriers already have virtually the same number of subscribers as KLM does in the same service area. This nearly 100% penetration rate indicates market saturation, not a lack of competition. In short, competition is already taking place in rural Missouri, so there is no need for small entities such as the MoSTCG member companies to subsidize their wireless competitors by paying for the wireless carriers' transport costs.

Finally, wireless carrier revenues in Missouri already exceed ILEC revenues.[18] And during the period between December of 1999 and June of 2004, wireless carriers added more than 1,000,000 subscribers in Missouri.[19] In 2004, wireless carriers in Missouri served 2,859,953 lines,[20] while Missouri's landline carriers served approximately 3,401,869 lines.[21] Clearly, the wireless carriers are successfully competing in Missouri and have increased both

[17] *Id.* Tr. 386-87 (from 7/21/4 hearing).

[18] *Trends in Telephone Service*, FCC – Industry Analysis and Technology Division, Wireline Competition Bureau, issued June 21, 2005. This report shows that Missouri wireless carriers had revenues of $1,680,000,000 while Missouri ILECs had revenues of $1,473,000,000, in 2003. *See* p. 15-9.

[19] *Id.* at p. 11-5. Table 11.2 shows that wireless telephone subscribers increased from 1,855,452 to 2,859,953 (an increase of over 1,000,000) between December of 1999 and June of 2004.

[20] *Id.*

[21] Missouri PSC 2004 Annual Report Data.

their revenues and market share. It is unnecessary for Missouri's small rural ILECs and their subscribers to subsidize wireless competition because it is already vigorous in Missouri.

B. There is No Demand for Intermodal LNP in Rural Missouri.

In Missouri, there is almost an absolute lack of demand for intermodal LNP in the rural areas served by the MoSTCG companies. Of those MoSTCG companies that have implemented intermodal LNP, there have only been three customers lost to intermodal LNP and three inquiries regarding intermodal porting since LNP was implemented on May 24, 2004 (over one year ago). Similarly, for those MoSTCG companies that have received temporary suspensions from the LNP requirements, there have only been two customer inquiries regarding intermodal LNP. There have been no customer complaints about the lack of intermodal LNP to any of the MoSTCG companies.

There is virtually no demand for intermodal LNP in the rural areas of Missouri served by the MoSTCG companies, and the lack of demand for wireline-to-wireless LNP in rural Missouri is consistent with low demand nationwide for intermodal telephone number porting. Indeed, data on porting activity published by the Commission earlier this month indicates that wireline-to-wireless porting accounts for only 3.05% of all telephone number porting activity in the database as of April 30, 2005.[22]

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[22] *Numbering Resource Utilization in the United States as of December 31, 2004*, Craig Stroup and John Vu – Industry Analysis and Technology Division, FCC Wireline Competition Bureau, August 2005. Table 14 shows 32,975,000 landline to landline ports (96.90%), 1,040,000 landline-to-wireless ports (3.05%), and 16,000 wireless-to-landline ports (0.05%) out of 34,031,000 total ports (100%).

IV. STATE COMMISSION SUSPENSION AND MODIFICATION MECHANISM

The *IRFA* seeks comment on the "effectiveness of state commission suspension and modification mechanism" for addressing potential burdens on small carriers.[23] Congress specifically intended for state commissions to have the power to suspend and modify requirements that are burdensome on small carriers or that will impose adverse economic impacts on customers.[24] In the case of intermodal (wireline-to-wireless) porting, the state commission suspension and modification mechanism was fairly successful, and many state commissions granted suspension and/or modification to small rural ILECs. In the Missouri LNP cases, the Missouri PSC applied the mechanism in the Act and found that the *Intermodal Order* would create an economic burden for many small Missouri companies and their customers. Accordingly, the Missouri PSC granted suspensions and modifications of the *Intermodal Order's* LNP requirements for those companies. Nevertheless, it would not have been necessary to employ the state commission suspension and modification procedures if the Commission had conducted a complete regulatory flexibility analysis in this case, and the Office of Advocacy of the U.S. Small Business Administration ("Advocacy") has noted the additional costs and uncertainty associated with the state petition approach. Advocacy has also expressed concern "that by relying upon petitions the FCC is shifting the burden to minimize the economic impact from the agency to the regulated small businesses."[25]

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[23] *IRFA* ¶15.

[24] See 47 U.S.C §251(f)(2).

[25] Comments of the Office of Advocacy of the U.S. Small Business Administration, Aug. 16, 2005, p. 7.

V. UNFAIR COMPETITIVE ADVANTAGES

The FCC's *IRFA* seeks comment on whether "permitting porting beyond wireline rate center boundaries would give large wireless carriers an unfair competitive advantage over smaller LECs by making it easier for more consumers to port numbers to larger nationwide carriers."[26] Any FCC requirement that would require porting to wireless facilities beyond rate center boundaries at the small rural ILEC's expense would create an unfair competitive advantage. Moreover, such a requirement would create a disincentive for wireless carriers to make investments in rural areas. In essence, this would allow large national wireless carriers to cream skim rural Missouri customers without making any investment in rural Missouri. Worse yet, the rural Missouri ILECs and their remaining customers would be left holding the bag for the LNP implementation costs as well as the ongoing transport costs. The Missouri PSC was "concerned by the fact that the few customers, if any, that do port their numbers to a wireless carrier will avoid the LNP surcharge and may leave [the] remaining customers paying even higher surcharges."[27]

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[26] *IRFA* ¶11.

[27] *In the Matter of the Petition of BPS Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Case No. TO-2004-0484, *Report and Order*, issued Aug. 26, 2004, p. 12.

VI. CONCLUSION

The costs and regulatory burdens that the *Intermodal Order* would place on small businesses such as the MoSTCG member companies far outweigh any minimal benefits associated with wireline-to-wireless LNP in rural areas. The Missouri PSC specifically found that wireline-to-wireless LNP would impose an undue economic burden on most of the MoSTCG companies. The Commission should recognize this fact and exempt small rural ILECs from the intermodal porting requirement.

At the very least, the Commission should ensure that wireless carriers make and pay for their own arrangements to transport the calls to their distant POI locations. This economic burden should not be placed on small rural ILECs. Small entities such as the MoSTCG companies have already spent substantial resources to become LNP capable or prepare for LNP. There is simply no reason to require the MoSTCG companies or their customers to bear the additional costs and burdens of carrying ported calls to their wireless company competitors' POIs far beyond the MoSTCG companies' exchange boundaries. Wireless carriers should bear the cost and responsibility for establishing any necessary facilities or arrangements with third-party carriers to transport calls to any point outside of a rural ILEC's local service area.

Respectfully submitted,

Brian T. McCartney_____________

W. R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
telephone: (573) 635-7166
facsimile: (573) 634-7431
Attorneys for the MoSTCG

ATTACHMENT A

BPS Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Mark Twain Rural Telephone Company
Miller Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.